IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 464 of 2006

M/S SUNDERLAL GARG
V/S
U.O.I.

Mr. RAJESH JOSHI, for the appellant / petitioner

Mr. ANIL BHANDARI for Mr.NM LODHA, for the respondent

Date of Order : 16.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Vide order dated 13.2.2007 while confirming interim stay, the matter was ordered to be listed for final disposal in March 2007. However, thereafter on 13.4.2007 the revision was dismissed in default and has subsequently been restored.

By the impugned order, the learned trial Court has dismissed the petitioner's application under Order 7 Rule 11 CPC read with Section 8 of the Arbitration Act.

It is contended by learned counsel for the petitioner that the matter is already pending before the Arbitrator, where while replying the petitioner's claim, the respondents have also lodged a counter-claim with respect to the same amount for the recovery whereof the present suit has been filed. Obviously therefore, when the matter is already pending consideration before the Arbitrator, the suit cannot be maintained.

On the other hand, learned counsel for the respondent submits that since the controversy relating to the amount in question for which the suit has been filed, is not covered by arbitration clause, therefore, the proceedings before the Arbitrator with regard to this amount is without jurisdiction, and therefore, the suit has been rightly filed.

However, during course of arguments, both the learned counsel agree that since the respondent has already filed a counter-claim with respect to the suit amount before the Arbitrator, and the Arbitrator is already going on with the matter, and since it is informed by Mr.Joshi that the arbitration proceedings are at the final stage, they agree that, that matter be also decided by the Arbitrator. In that view of the matter, the revision petition is allowed. The impugned order is set aside the suit is dismissed. The Arbitrator is directed to proceed expeditiously.

(N P GUPTA),J.

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